



Sunshine Law Guidance for Responding to Public Records Requests During a Public Health Crisis or State of Emergency

Public health crises and states of emergencies may cause challenges to public governmental bodies responding to public records requests. The Attorney General's Office has prepared information for public governmental bodies seeking guidance on fulfilling public records requests and complying with the Sunshine Law during these times.

Tip #1: Forward all requests to the custodian of records

Section 610.023.3, RSMo, provides that "Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body."

As a best practice, public governmental bodies should forward all records requests to the custodian of records. This is especially important during times of limited or suspended governmental operations. The custodian of records is typically in the best position to ensure consistent responses and coordinate searches of records among multiple personnel.

Furthermore, Missouri courts have suggested that a public governmental body may violate the Sunshine Law if its conduct effectively thwarts and precludes compliance with the Sunshine Law, such as by purposefully not delivering records requests to the custodian. *Anderson v. Vill. of Jacksonville*, 103 S.W.3d 190, 198-99 (Mo. App. W.D. 2003).

Tip #2: Respond within three business days after receipt

As Missouri courts have held, § 610.023, RSMo, ensures that "the requester shall receive a rapid response" under the condition that "the three days runs from receipt of the request by the records custodian." *Anderson*, 103 S.W.3d at 199. In other words, "until the custodian of records receives the request, the three-day response requirement is not triggered." *Id.*

If the custodian of records is working during a public health crisis, either full-time or part-time and either in-person or remotely, the Sunshine Law still requires the public governmental body to respond to every request for records upon the custodian's receipt.

Tip #3: Inform the public if more time than normal is needed to provide records

The Sunshine Law allows public governmental bodies more than three days to provide records in response to a request. However, under § 610.023, RSMo, an initial response

still must be provided within three business days. In the event more time is needed to provide the records, the statute requires the public governmental body to “give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period of document production may exceed three days for reasonable cause.” § 610.023.3, RSMo.

Public health crises and states of emergency would constitute a reasonable cause for needing more time than normal to respond to a public records request. This is because oftentimes many staff members of a public governmental body need to assist in searching and assembling records when responding to a request. A public health crisis may result in limited staffing.

If the custodian of records is working (and receiving records requests) but other staff is limited due to the public health crisis, the Attorney General’s Office suggests using the following language in the initial three-day response letter:

The custodian of records for the **[name of public governmental body]** has received your request. Staff is working as diligently as possible to search our records to determine if we maintain and responsive records. The current public health crisis has resulted in limited staff availability. This may make it more challenging to fulfill your request for records. In light of current conditions, we estimate that the soonest we can provide records will be **[estimated date]**. Thank you for your patience during these difficult times.

Tip #4: Provide as many updates as possible to the public on the status of fulfilling records requests

Given the Sunshine Law’s purpose of promoting governmental transparency, public governmental bodies should always ensure that they maximize the amount of information given to the public. This is true for both public records and public meetings.

If staffing allows, a public governmental body should remain in contact with parties that have requested public records and provide updates on the status of fulfilling their requests. If the public governmental body does not expect that staff will be available to search for records or provide updates, the body should consider sending a standardized communication to all parties that have requested records and inform them about the status of the body’s operations and a new estimated date that records might become available.

Tip #5: If the custodian of records is not working, provide information to the public through automatic out-of-office replies and websites

A public health crisis or state of emergency may require the custodian of records to refrain from working until the crisis has been resolved.

Many public governmental bodies primarily use email to correspond with the public about records requests. Some public governmental bodies use a centralized email account for all requests, while others use the custodian's email account as the repository for records requests.

If the custodian of records will not be working due to limited or suspended governmental operations, the public governmental body should implement automatic out-of-office replies for the appropriate email account. The Attorney General's Office suggests using the following language:

If you have submitted a request for public records, the **[name of public governmental body]** has received your request. In light of the current public health crisis, the custodian of records will be out of the office for at least the next **[number of]** days. When the custodian of records returns, the **[name of public governmental body]** will ensure that the custodian receives and reviews your request. At that time, we will be able to provide you with the place and the earliest date and time records will be available, if any such records are retained by the **[name of public governmental body]**. Thank you for your patience during these difficult times.

As a best practice, if another employee of the public governmental body receives a request for records, the body should respond to the requester using similar language. At all times, public governmental bodies should maximize the amount of information given to the public upon receipt of a records request.

The Attorney General's Office encourages all public governmental bodies with a website to inform the public about limited or suspended governmental operations and any delays this might cause to the processing of public records requests.

We hope this information is helpful. If you have any questions or concerns please feel free to visit our website at www.ago.mo.gov/missouri-law/sunshine-law or contact our Director of Sunshine Law Compliance, Ms. Casey Lawrence, at 573-751-8905.